

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

HARTINGS  
167

ERIC L. JEFFRIES, . CIVIL ACTION NO. C-1-02-351  
Plaintiff, . Cincinnati, Ohio  
- v - . Thursday, February 19, 2004  
CENTRE LIFE INSURANCE CO., . 3:22 p.m. Hearing  
et al., .  
Defendants. . Testimony of Michael F.  
..... Hartings and Newton  
Bullard, M.D.

TRANSCRIPT OF EXCERPTS OF PROCEEDINGS  
BEFORE THE HONORABLE SANDRA S. BECKWITH, JUDGE  
TRANSCRIPT ORDERED BY: Michael A. Roberts, Esq.

APPEARANCES:

For the Plaintiff: GRAYDON, HEAD & RITCHEY, LLP  
BY: Michael A. Roberts, Esq.  
511 Walnut Street  
Cincinnati, Ohio 45202

For the Defendants: WOOD & LAMPING, LLP  
BY: William R. Ellis, Esq.  
and Amy G. Callow, Esq.  
600 Vine Street, Suite 2500  
Cincinnati, Ohio 45202

Law Clerk: Patrick J. Smith, Esq.

Courtroom Clerk: Mary C. Brown

Court Reporter: Mary Ann Ranz

2

## I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL F. HARTINGS, Ph.D.	3	14 (further)	51 57	56
NEWTON BULLARD, M.D.	57	62	88	--

1 THURSDAY, FEBRUARY 19, 2004

2 MID-AFTERNOON SESSION

3 P R O C E E D I N G S (3:22 p.m.)

4 THE CLERK: Please be seated.

5 THE COURT: Mr. Ellis.

6 MR. ELLIS: Your Honor, Dr. Michael Hartings is a  
7 witness proffered by the Defense, has been the subject of a  
8 Daubert challenge by Mr. Roberts. I would like to call him  
9 to the stand.

10 THE COURT: Okay.

11 THE CLERK: Please raise your right hand.

12 (Duly sworn by the Clerk.)

13 THE CLERK: Please be seated.

14 MICHAEL F. HARTINGS, Ph.D.

15 a witness herein, having previously been sworn, testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q. Dr. Hartings, would you be good enough to identify  
20 yourself to the Court, please?

21 A. My name is Michael F. Hartings; H A R T I N G S.

22 Q. By whom are you employed, Dr. Hartings?

23 A. Riverhills Healthcare.

24 Q. In and in what capacity, sir?

25 A. As a psychologist.

HARTINGS - DIRECT

1 Q. Tell the Court, please, where you received your training  
2 for undergraduate in psychology?

3 A. I received a bachelor's degree from Xavier University  
4 here in town in 1964; master's degree in psychology from  
5 Northwestern in 1967, and a doctoral degree in psychology  
6 from Northwestern, that's in Evanston, Illinois, in 1968.

7 Q. Since your degrees, have you been in the practice of  
8 psychology?

9 A. Yes.

10 Q. Do you have a board certification or its equivalent in  
11 any subspecialty of psychology?

12 A. Yes.

13 Q. What are those?

14 A. I have two board certifications: One in clinical  
15 psychology and one in forensic psychology.

16 Q. Would you be good enough to tell the Court what clinical

13 MR. ELLIS: The difference, Your Honor, is counsel  
14 argues whether a doctor made a diagnosis or didn't make a  
15 diagnosis. Diagnosis doesn't mean anything. The diagnosis  
16 is that doctor's opinion of what the situation is at the  
17 time. It's not binding. If the symptoms are accounted for  
18 in the review of the medical records or if there are multiple  
19 diagnosis as in this case, depending on which doctor you see,  
20 you get a different view from everybody as to what this  
21 particular patient has.

22 The fact that there's a diagnosis, counsel seems to think  
23 is definitive, that's the end of it. Diagnosis has changed  
24 in this patient with everybody he saw. It's not definitive,  
25 nor is it the defining feature. The question is did Dr.

HARTINGS - CROSS

50

1 Hartings have a basis in the science of psychology to render  
2 the opinions he did, and that's the only issue in Daubert.

3 MR. ROBERTS: And under undifferentiated somatoform  
4 disorder there has to be an absence of a diagnosis.

5 MR. ELLIS: Okay, that --

6 THE COURT: I understand. I understand. The  
7 objection, however, is overruled. Go ahead, Mr. Roberts.

8 MR. ROBERTS: I can't recall what the question, Your  
9 Honor. Mary Ann, would you try to read it back?

10 (Court reporter read back the following question: "Did  
11 ~~Dr. McClellan make an error~~, in your professional judgment,  
12 about the diagnosis?")

13 A. I have no way of knowing.

14 Q. You have no way of knowing because you don't know what  
15 the sequelae are to a cognitive disability or other symptoms  
16 from an autoimmune reaction to Hepatitis B vaccine; right?

17 A. I believe I answered that.

18 Q. You don't know; do you?

19 A. Yeah, I do know.

20 Q. Now you do know the sequelae?

21 A. Didn't I answer it in the affirmative in the past? I  
22 said I don't know the medical sequelae.

23 Q. Correct. In fact, some of the cognitive dysfunction in  
24 Mr. Jeffries you assign to this obsessive-compulsive-like  
25 disorder that isn't contained in the DSM; right?

HARTINGS - REDIRECT

51

1 A. I believe Mr. Jeffries -- yes.

2 Q. Thank you.

3 A. That's right. Mr. Jeffries' cognitive style reflects an  
4 obsessionalism which interferes with his thinking.

5 Q. So, while you don't know what amount of the cognitive  
6 disorder should be assigned to the autoimmune reaction, you  
7 just don't know, you do contend that some of the cognitive  
8 disorder I think you -- that Mr. Jeffries exhibits is  
9 attributed not to somatomization but to obsessive-compulsive,  
10 which isn't even a diagnosis you make?

11 A. Again, to restate what I said, I believe that Mr.  
12 Jeffries' cognitive dysfunction is in part and significantly  
13 influenced by an obsessional style of thinking and an

14 obsessional approach to life.  
15 Q. Very well. When did Mr. Jeffries get his  
16 undifferentiated somatoform disorder?  
17 A. I believe it occurred as a traumatic response to the  
18 effects of his immunizations.  
19 Q. Undifferentiated somatoform disorder results are  
20 associated with a physical illness; right?  
21 A. Yes. Can be.  
22 MR. ROBERTS: Thank you.  
23 REDIRECT EXAMINATION  
24 BY MR. ELLIS:  
25 Q. Dr. Hartings, are there different ways in psychology to

52  
HARTINGS - REDIRECT

1 express what it is, what symptom or sign is actually  
2 disabling a person?  
3 A. Excuse me?  
4 Q. Yes. Are there different ways for different  
5 psychologists to assign or define a psychological ailment  
6 that's causing a disability such as these cognitive deficits  
7 in Mr. Jeffries?  
8 A. There are different ways of describing disabilities, yes.  
9 Q. If you look only at the cognitive deficit, would you  
10 define it under the DSM-IV as cognitive -- cognitive disorder  
11 not otherwise specified?  
12 A. Yes.  
13 Q. Now, if someone suffers from cognitive disorder not  
14 otherwise specified, regardless of its cause, if that's the  
15 disabling feature, that is a DSM-IV diagnosis?  
16 A. It is.  
17 Q. That's the one made by Dr. Hawkins; is that correct?  
18 A. Yes, I think I made it as well.  
19 Q. As part of your diagnosis?  
20 A. Cognitive disorder with undetermined etiology, right.  
21 Q. Now, a cognitive disorder that's caused or is part of a  
22 physical ailment is an actual loss of brain cell or brain  
23 function because of physical trauma, toxicity, or some such  
24 thing; correct?  
25 A. Right. It is what we call neurogenic.

63  
HARTINGS - REDIRECT

1 Q.

Correct. If you don't have neurogenic cognitive

2 disorder, it is then psychogenic; correct?  
3 A. Right.  
4 Q. Is there any evidence that you have seen in the records  
5 that were provided to you of all these doctors of Mr.  
6 Jeffries that said there was a neurogenic -- objective  
7 finding of a neurogenic deficit in his brain?  
8 A. No.  
9 Q. Which leaves with a psychogenic cognitive deficit?  
10 A. Yes.  
11 Q. Whether it's -- well, we already know that you classify  
12 it, as did Dr. Hawkins, as a cognitive deficit not otherwise  
13 specified.  
14 Let's talk about somatoform. At the time that you

15 diagnosed him -- and when you say that you brought the DSM-IV  
16 to me, somatomization disorder, severe, and undifferentiated  
17 somatoform disorder shared exactly the same number, 300.81;  
18 correct?

19 A. That is correct.

20 MR. ROBERTS: Objection: Leading.

21 Q. Subsequent to that time, did they change the .81 to .82  
22 for part of that diagnosis?

23 A. I believe that the American Psychiatric Association  
24 issued a revised text which separated them.

25 Q. Okay. At the time and based upon the DSM-IV volume you  
HARTINGS - REDIRECT

54

1 were using, they bore exactly the same diagnostic numbers;  
2 correct?

3 MR. ROBERTS: Objection: Leading.

4 THE COURT: Sustained.

5 A. Yes, they did.

6 Q. Dr. Hartings, counsel has badgered you about whether or  
7 not you could accept or not accept a diagnoses of the  
8 treating physicians.

9 Did you or did you not, between the second and third  
10 visit with Mr. Jeffries, review a huge stack of medical  
11 records?

12 A. I did.

13 Q. Was there any consistency in the diagnoses that were  
14 rendered among all these doctors?

15 A. Not that I could detect.

16 Q. Were there any objective findings made by the doctors to  
17 support a diagnosis?

18 A. All -- all of the doctors that I recall reviewing had no  
19 medical -- no positive medical tests that would support a

20 diagnosis.

21 Q. When Dr. Hawkins was asked about chronic fatigue  
22 syndrome, he was asked are you aware of whether or not  
23 research has ever settled whether chronic fatigue syndrome  
24 was psychogenic or physical, he answered, "I think the answer  
25 to that question is yes" --

HARTINGS - REDIRECT

55

1 MR. ROBERTS: Objection.

2 Q. "...I'm aware that nobody knows."

3 "Are you aware whether there's any definition of chronic  
4 fatigue or psychogenic or physical" --

5 MR. ROBERTS: Whose deposition did we just read  
6 from?

7 MR. ELLIS: Dr. Hawkins. Your psychiatrist. Pages  
8 30 --

9 MR. ROBERTS: In what context and what does it have  
10 to do with this witness and Daubert?

11 MR. ELLIS: Pages 30 and 31. We're talking about  
12 whether -- even if there is chronic fatigue, if someone says  
13 he has chronic fatigue, the question is, is it physical or  
14 psychological and nobody knows, including his psychiatrist.  
15 I'm asking if maybe Dr. Hartings knows.

16 MR. ROBERTS: This witness testified it's in the

17 field of immunology. It doesn't have to do with his Daubert  
 18 challenge and whether or not he ever gets to undifferentiated  
 19 somatoform disorder when he doesn't have the discretion to  
 20 ignore doctors' opinions.

21 THE COURT: Well, I'll sustain the objection. I  
 22 think it's outside the scope of cross in any event.  
 23 Q. Doctor, did you, in evaluating this patient and coming to  
 24 your conclusions that it's somatomization disorder, or  
 25 somatoform disorder, whatever the current term is, ignore the

HARTINGS - RECROSS

54

1 medical records or medical diagnosis of any of these  
 2 physicians?

3 A. Absolutely not. I pored over them with a fine-tooth  
 4 comb.

5 MR. ELLIS: That's all I have. Thank you.

6 THE COURT: Recross?

7 RECROSS EXAMINATION

8 BY MR. ROBERTS:

9 Q. You didn't pore over Dr. Poser's opinion with a  
 10 fine-tooth comb. You didn't even look at it.

11 A. Well, I would have to go see if his record is in my file.

12 Q. You don't refer to it in your report. You told me in  
 13 your deposition that you don't recall ever seeing it.

14 A. No, I said -- I didn't refer to any of the doctors that I  
 15 reviewed in my -- Let's put it this way: I did not list all  
 16 of the records that I reviewed in my report.

17 As I sit here today, I recognize the name Dr. Posner. I  
 18 do not know if I reviewed his record in connection with this.  
 19 But every record that was provided to me I reviewed with a  
 20 fine-tooth comb.

21 Q. Okay. Let's be clear though. You testified in your  
 22 deposition you didn't remember looking at Dr. Poser and you  
 23 don't mention Dr. Poser in your report.

24 A. Right.

25 Q. And you couldn't have reviewed Dr. McClellan's d

deposition

57

BULLARD - DIRECT

1 testimony because that occurred after your report; right?

2 A. From what you say I did, yes.

3 MR. ROBERTS: Thank you.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. ELLIS:

6 Q. Did you mention by name any of the other 84 doctors --

7 MR. ROBERTS: Re-re?

8 Q. -- you reviewed?

9 THE COURT: Sustained. Thank you, Doctor. You can  
 10 step down. You're excused.

11 (Witness excused.)

12 MR. ELLIS: Your Honor, we'll call Dr. Bullard, if  
 13 the Court wishes to continue at this time.

14 THE COURT: Fine.

15 THE CLERK: Please raise your right hand.

16 (Witness duly sworn in by the Clerk.)

17 THE CLERK: Please be seated.